

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

James Keyser & Denise Keyser

Social Security No.:

xxx-xx-6556 and xxx-xx-5133

Address:

Post Office Box 260, Timberlake, NC 27583-

Case No. 09-81089- -

Chapter 13

Debtors

**MOTION TO ALLOW AMENDED EXEMPTIONS AND
TO DETERMINE DISTRIBUTION OF PROCEEDS
FROM THE SALE OF REAL PROPERTY**

NOW COME the above captioned Debtors, by and through the undersigned counsel, and respectfully move the Court to allow the amendment of their exemptions and to direct the Chapter 13 Trustee to disburse \$37,000.00 in the net proceeds from the sale of their homestead, consisting of their residence and the adjacent property. In support thereof, the Debtors respectfully show as follows:

1. The Debtors filed a voluntary petition for relief in bankruptcy court under Chapter 13 of the United States Code on June 30, 2009.
2. At that time, the Debtors disclosed their ownership in two adjacent properties, both with the mailing address 331 Gaither Ashley Road, Timberlake NC 27583.
3. The Debtors valued the house and land at that location, using the Person County tax appraisal, in the amount of \$178,600.00.
4. The Debtors valued the adjacent land at that location, using the Person County tax appraisal, in the amount of \$20,058.00.
5. That total value of such real property was \$198,658.00, of which the house and land represented 90% and the adjacent land represented 10%.
6. On December 15, 2010, the Court approved a private sale of both properties for \$223,000.00.
7. Based on the original ratio of the values for the two properties, the house and land would be valued at \$200,484.25 (90% of \$223,000.00) and the adjacent land would be valued at \$22,515.75. (10% of \$223,000.00.)
8. The Debtors are seeking to amend their exemptions for the following reasons:

- a. To accurately reflect the amounts of the various claims at the time of filing;
 - b. To claim, pursuant to *In re Lanier*, 394 B.R. 382 (E.D.N.C. 2008), the following factors support application of the homestead exemption of N.C.G.S. § 1C-1601(a)(1):
 - i. The property has the same physical address as the house;
 - ii. The property has a metal building used by the Debtors for storage of personal property, household goods, and lawn equipment;
 - iii. The property had a swing set used by the Debtors' children, who also used the property for playing baseball, soccer and bicycle riding; and
 - iv. The property was mown and maintained by the Debtor as part of the yard.
9. Accordingly, the Debtors should be allowed to claim a homestead exemption, of up to \$18,500.00 each, in all of the net proceeds.
10. That the Chapter 13 Trustee has received net-proceeds from the sale of the real property in the amount of \$39,259.75, of which \$37,000.00 should be disbursed to the Debtors.

WHEREFORE the Debtors respectfully request that the Court allow the amended exemptions and direct the Chapter 13 Trustee to disburse \$37,000.00 to them, representing the exempt portion of the proceeds.

Dated: April 4, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward C. Boltz
Edward C. Boltz
North Carolina State Bar No.: 23003
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

James Keyser & Denise Keyser

Social Security No.:

xxx-xx-6556 and xxx-xx-5133

Address:

Post Office Box 260, Timberlake, NC 27583-

Case No. 09-81089- -

Chapter 13

Debtors

CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on May 6, 2011 , I served copies of the foregoing **MOTION TO ALLOW AMENDED EXEMPTIONS AND TO DETERMINE DISTRIBUTION OF PROCEEDS FROM THE SALE OF REAL PROPERTY and AMENDED EXEMPTIONS** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee

Michael West
U.S. Bankruptcy Administrator

Gail Boyd
215 Overton Rd.,
Raeford, NC 28376-

All creditors with duly filed claims as listed on the attached Report of Claims Filed at the addresses listed thereon.

/s Renee Nolte
Renee Nolte